

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

JULIO GARZA §
Plaintiff, §
§
vs. § 2:15-cv-77
§ Civil Action Number
STATE AUTO PROPERTY & CASUALTY §
INSURANCE COMPANY §
Defendant. §

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant State Auto Property & Casualty Insurance Company files this Notice of Removal pursuant to 28 U.S.C. §1446(a), and would respectfully show as follows:

I.
INTRODUCTION

1. Plaintiff is Julio Garza (“Plaintiff”); Defendant is State Auto Property & Casualty Insurance Company (“State Auto”). There are no other parties. *See* Plaintiff’s Original Petition, attached as Exhibit “A - 1”.
2. On June 15, 2015, Plaintiff filed Cause No. 31956, *Julio Garza v. State Auto Property & Casualty Insurance Company*, in the 83rd Judicial District Court of Val Verde County, Texas (the “State Court Action”). *See* Exhibit “A - 1”. Plaintiff’s suit alleges negligence, breach of contract, violations of the Deceptive Trade Practices Act (DTPA) and tie-in statutes, violations of the Texas Insurance Code, breach of common law duty of good faith and fair dealing, breach of fiduciary duty, unfair insurance practices, misrepresentation, and common law fraud by negligent misrepresentation relating to storm damage allegedly suffered at Plaintiff’s home located at 112 Fiesta Drive, Del Rio, Texas 78840. *See* Exhibit “A – 1”.

3. Citation was issued and State Auto was served with the suit on July 8, 2015. *See Exhibit "A - 4"* and Affidavit of Rhonda Lukie, attached as Exhibit "B". State Auto files this Notice of Removal within the 30-day time period required by 28 U.S.C. §1446(b). *Bd. of Regents of Univ. of Tex. Sys. v. Nippon Tel. & Tel. Corp.*, 478 F.3d 274, 278 (5th Cir. 2007). State Auto files its Answer in this Court contemporaneously with the filing of this Notice of Removal.

4. Plaintiff has not filed any amended pleadings and no additional parties have been joined. The State Court's Docket Sheet is attached as Exhibit "A - 5".

II.
REMOVAL BASED ON DIVERSITY JURISDICTION

5. Pursuant to 28 U.S.C. §1332(a), State Auto removes this case as it involves a controversy between parties of diverse citizenship and an amount in controversy that exceeds \$75,000.

6. Plaintiff is a citizen of Texas. *See Exhibit "A - 1"*. State Auto is a foreign corporation organized under the laws of the state of Iowa with its principal place of business located at 518 E. Broad Street, Columbus, Ohio 43215. *See Exhibit "B"*.

7. Additionally, the amount in controversy exceeds \$75,000, excluding interest and costs. 28 U.S.C. §1332(a). Plaintiff's Original Petition seeks "monetary relief of \$100,000.00 or less." *See Exhibit "A - 1"*.

8. State Auto is the only defendant in this action, therefore no consent is needed for the removal of this case to federal court.

9. An Index of Exhibits is attached as Exhibit "A". Copies of all pleadings, process, orders, and other filings in the State Court Action are attached to this notice as Exhibits "A - 1" through "A - 5", as required by 28 U.S.C. §1446(a).

10. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court where the suit has been pending is located in this District and within this Division.

11. State Auto will promptly file a copy of this notice of removal with the clerk of the court in the pending State Court Action.

III.
JURY DEMANDED

12. Plaintiff demanded a jury in the State Court Action.

VI.
PRAYER

WHEREFORE PREMISES CONSIDERED, Defendant State Auto prays that this case be removed to the United States District Court for the Western District of Texas, Del Rio Division, and that further proceedings in the State Court Action be discontinued, and that this Court assume full jurisdiction over such action as provided by law.

Respectfully submitted,

/s/Sterling Elza
Sterling Elza
State Bar No. 24026823
Brown, Dean, Wiseman, Proctor,
Hart & Howell, L.L.P.
306 West 7th Street, Suite 200
Fort Worth, Texas 76102-4905
Tel: 817/332-1391
Fax: 817/870-2427
Email: selza@browndean.com

**ATTORNEY FOR DEFENDANT,
STATE AUTO PROPERTY & CASUALTY
INSURANCE COMPANY**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was served upon the Plaintiff, by serving counsel of record, Bill L. Voss, Scott G. Hunziker, and Tyler Bleau, The Voss Law Firm, P.C., 26619 Interstate 45 South, The Woodlands, Texas 77380, (713)861-0021, via fax and certified mail return receipt requested, on this the 31st day of July, 2015.

/s/ Sterling Elza
Sterling Elza